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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,849	01/13/2004	Jeffrey Gabbay	082871-000520US	3395

20350 7590 08/03/2007  
TOWNSEND AND TOWNSEND AND CREW, LLP  
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EXAMINER
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BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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08/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/756,849

Applicant(s)

GABBAY, JEFFREY

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on 17 April 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US application numbers 10/757,786 and 10/404,408 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections – 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 5 are rejected under 35 U.S.C. § 112, first paragraph, as based on a disclosure which is not enabling. The dark brown form of copper oxide is a mixture of cupric oxide and cuprous oxide which is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). See paragraph 4 of applicant's declaration under 37 CFR 1.132, dated 05 March 2007.

### ***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinberg (US 5,856,248 A) in view of Gabbay (CA 2 404 972 A1).

Regarding claims 1, 5 and 7, Weinberg teaches a disposable feminine hygiene paper-based product capable of combating yeast infections, comprising a portion formed from paper mulch said portion comprising a plurality of fibers coated with an anti-biotic, water-insoluble, form of copper bound to the fibers, which fibers have been added to said paper mulch and which fibers release cupric ions in cationic form when in contact with a fluid, wherein said disposable feminine hygiene paper-based product is selected from the group consisting of sanitary napkins, sanitary pads, panty shields and tampons (abstract; col. 3, lines 5-54; example 10).

Weinberg does not disclose expressly a water insoluble, dark brown form of copper oxide.

Gabbay teaches antimicrobial polymeric textiles that have microscopic particles of ionic copper oxide encapsulated therein. The particles release  $\text{Cu}^{++}$  ions when in contact with a fluid. The particles include a water insoluble mixture of cupric oxide ( $\text{CuO}$ ) and cuprous oxide ( $\text{Cu}_2\text{O}$ ) powder (abstract; page 4, lines 14-24; examples 1 and 2; claim 9). Cupric oxide is black in color while cuprous oxide is red. A mixture of cupric oxide and cuprous oxide is dark brown in appearance (see paragraph 4 of applicant's declaration under 37 CFR 1.132, dated 05 March 2007).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to substitute the antimicrobial mixture of cupric oxide and cuprous oxide of Gabbay in the device

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of Weinberg in order to provide an art recognized effective antimicrobial compound that is insoluble in water.

The limitations concerning how the paper-based product is made from mulch and how the fibers are finely chopped before addition to the mulch are product-by-process limitations. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. Weinberg teaches cellulosic fibers which are substantially the same as those made according to the claims (col. 3, line 2).

Regarding claims 2 and 6, Weinberg teaches cellulosic fibers (col. 3, line 2).

Regarding claim 3, see Weinberg, col. 2, line 49-col. 3, line 62.

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinberg and Gabbay as applied to claims 1-3 and 5-7 above, and further in view of Gabbay (US 6,124,221 A; hereinafter: '221).

Weinberg in view of Gabbay do not teach a layer positioned in the product that is in contact with the genital area of a user.

'221 teaches a skin contactable garment liner comprising an anti yeast infection liner (col. 30, lines 51-53).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to make a body contacting layer of the sanitary napkins of Weinberg and Gabbay as suggested by '221 in order to provide direct relief to the skin of a wearer.

***Response to Arguments***

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
16 July 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

